

Resolution No.: 15-1685  
Introduced: October 31, 2006  
Adopted: October 31, 2006

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION  
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT  
IN MONTGOMERY COUNTY**

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By: County Council

**SUBJECT:** APPLICATION NO. G-836 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Scott Wallace, Attorney for Owner Vedanta Center of Greater Washington D.C., Inc. and Owner/Contract Purchaser J. Kirby Development, L.L.C., OPINION AND RESOLUTION ON APPLICATION.

Tax Account Nos. 13-00982556, 13-00966534, 13-00961315

**OPINION**

Application No. G-836, filed on March 3, 2005 by Applicants J. Kirby Development, LLC and Vedanta Center of Greater Washington, D.C., Inc., requests reclassification from the RE-2 Zone (residential, one-family, two-acre minimum lot size) to the PD-2 Zone (Planned Development, two dwelling units per acre) of 16 acres of land located at 2929, 3001 and 3031 Bel Pre Road in Silver Spring, Maryland, in the 13th Election District. The property is identified as Part of Lots 3, 4 and 5 of the "Homecrest" subdivision, recorded in Plat Book 25, Plat 1586. As required under the PD Zone, the application was accompanied by a Development Plan with detailed specifications related to land use, density, development standards and staging. Pursuant to Code § 59-D-1.11, development under the PD Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD Zone.

The Hearing Examiner recommended approval of the proposed rezoning on grounds that the proposed development would be in substantial compliance with the applicable master plan, would comply with the purposes, standards and regulations of the PD-2 Zone, would provide for a form of development that will be compatible with existing land uses in the surrounding area and would serve the public interest. The Montgomery County Planning Board (the "Planning Board") and its Technical

Staff made similar recommendations. The District Council agrees, and incorporates herein the Hearing Examiner's Report and Recommendation dated October 10, 2006.

The subject property consists of approximately 16 acres of land located in the northeast quadrant of the intersection of Bel Pre Road and Homecrest Road, roughly midway between Bel Pre Road's intersections with Georgia Avenue (to the west) and Layhill Road (to the east). The three lots comprising the subject property form a nearly square tract of land, with approximately 867 feet of frontage on Bel Pre Road, a five-lane undivided arterial road with an 80-foot right-of-way, and 800 feet of frontage on Homecrest Road, a narrow, two-lane, residential primary street. Confronting to the south, across Bel Pre Road, are three- and four-story apartments and townhouses. Confronting to the west, across Homecrest Road, are Aspenwood Senior Living Community, located at the northwest corner of Bel Pre and Homecrest Roads, which provides assisted living for senior adults and special needs care; three single-family homes; and, diagonally to the northwest, Homecrest House, a senior housing and assisted living facility. To the east, the subject property abuts the property of the Wheaton Moose Lodge, which is occupied by a social lodge and is about half wooded. To the north, the subject property abuts the Aspen Hill Club (the "Aspen Hill Club"), a large complex of indoor and outdoor sports facilities with very large tennis bubbles and other buildings, plus extensive parking lots.

Lot 3, at the east end of the site, is mostly wooded and has a one-story brick house, a carport and a driveway off of Bel Pre Road. Lot 4, in the center, is also mostly wooded. It is occupied by the Vedanta Center, a worship center consisting of a concrete and stone building with a one-story wing and a two-story wing, which is used for congregation gatherings and as a home for resident monks; a small, brick, 1 ½ story guest house; a paved driveway off of Bel Pre Road; and a gravel parking area. Lot 5, at the west end of the site, is mostly grassy, with a one-story brick house, a concrete block garage, a metal shed and driveway access from Homecrest Road.

The subject property is gently to moderately sloping. It contains approximately 9.62 acres of forest, with two major forest stands rated good quality. The property contains no flood plains,



but a small stream known as Bel Pre Creek flows through the northeast part of the property. As a result, a substantial portion of the combined property is undevelopable stream valley buffer.

The surrounding area for this application consists, roughly, of the Bel Pre Road Area described in the *1994 Approved and Adopted Aspen Hill Master Plan* (which extends from Bel Pre Road on the south to Homecrest Road on the west, the property line of Argyle Country Club on the north and the Bel Pre Square Townhouses, across from North Gate Drive, on the east), plus properties that are either adjacent or directly or diagonally confronting.

The surrounding area contains a mix of uses including three- and four-story apartment buildings, senior housing including assisted living, townhouses, single-family detached homes, churches, a large sports facility, a social lodge and a country club. The zoning pattern is a mixture of RE-2, RE-2/TDR, R-200 and R-150 zoning, the product of multiple individual rezonings that occurred mostly between 1965 and 1980.

The subject property was classified under the R-A (Agricultural Residential) Zone in the 1958 County-wide comprehensive rezoning. The R-A Zone was redesignated the RE-2 Zone by text amendment in 1973, and the subject property's zoning has remained the same since then. The area was recommended for reclassification to the R-200 Zone in the *1970 Aspen Hill Master Plan*, but no sectional map amendment followed. RE-2 zoning on the subject property was confirmed by Sectional Map Amendment G-709 in 1994, as recommended in the 1994 Master Plan.

Lots 3 and 5 of the subject property are each developed with a single-family home, while lot 5 has been the site of the Vedanta Center for eight or nine years. The Center has ties to Indian spiritual traditions, but considers itself a universal, non-denominational movement, accepting people from all religions and different spiritual paths. The Center teaches spiritual principals and practices including meditation, and tries to maintain a serene atmosphere.

The Applicant proposes expansion of the Vedanta Center's facilities and the coordinated development of a residential community with a total of 39 dwelling units: 20 new single-family detached homes, 12 new single-family, semidetached duplex units, six new single-family attached units to be

marketed as moderately-priced dwelling units ("MPDUs"), and the existing Vedanta Center guest house. The largest grouping of homes would be at the west end of the site, near Homecrest Road, with 14 detached homes and six townhouses. The other six detached homes would be in the northeast corner of the site, overlooking the stream valley buffer. The 12 duplex units would be in the southeast corner of the site, south of the stream valley buffer and east of the Vedanta Center parking lot. The preliminary bedroom calculation indicates that the single-family detached units would have four bedrooms, the townhouses would have two bedrooms with an optional third bedroom, and the duplexes would have three bedrooms.

The detached homes at the western end of the site are shown facing each other across a main road (Road B) and a perpendicular entrance road (Road A). The townhouse MPDUs are shown grouped in a single location on Road B, in two blocks of three units each, backing onto Bel Pre Road. Road A is shown running perpendicular to Homecrest Road, separating the Homecrest Road frontage into two parts. The visually-prominent location at the corner of Homecrest and Bel Pre Roads, south of Road A, would be occupied by three detached homes. On the rest of the Homecrest Road frontage, north of Road A, two detached homes are shown at each end of the block, with a proposed 0.63-acre reforestation area between them. The reforestation area would be an "artificial" forest, to be created from scratch on what is now a grassy field. It would provide a significant visual break in the line of homes. In addition, the Applicant has committed to creating a permanent, 20-foot landscaped buffer strip between these homes and the new Homecrest Road right-of-way, as well as installing a sidewalk and street trees.

The other side of Road B is shown with a row of seven single-family detached homes, interrupted by a recreation area and an open play area overlooking the stream valley buffer. The northern end of Road B is shown connecting to "Road C," along the northern property line, which would provide a second point of access off of Homecrest Road.

The existing Vedanta Center worship building, measuring approximately 4,300 square feet and located roughly in the middle of the site, would be retained. In addition, a new, 6,500-square



foot addition would be built onto the rear wall of the existing worship building, with a landscaped courtyard between the old and new structures. The new building would provide a larger worship space and a cellar to serve refreshments, which is lacking in the current facility. The Center plans to use the auditorium in the existing building as a multi-function meeting space. The architecture for the new building is based on a well-known Indian Hindu temple, incorporating a blend of traditional Indian and European styles. The maximum height would be 24 feet, plus an additional 20 feet for cupolas and domes. The new Vedanta Center building would face east, towards a wooded area abutting the stream valley buffer. It would be partially obscured from view from Bel Pre Road by the existing Vedanta Center buildings.

The Development Plan allocates the land immediately south of the Vedanta Center, between the Center and Bel Pre Road, to an 85-space parking lot for the Vedanta Center. East of the parking lot, in the southeast corner of the site, the Development Plan provides for 12 duplex units.<sup>1</sup> Each duplex unit is shown with a one-car garage and one driveway space. The plan shows a sidewalk connecting Bel Pre Road to the duplex units, and continuing on to link the duplexes to sidewalks within the Vedanta Center facility, and from there to a path leading along the stream valley buffer to proposed recreation areas on the west side of the site and, eventually, Homecrest Road.

The duplex units, as shown on the Development Plan, would be separated from the Wheaton Moose Lodge property by a forested area approximately 77 feet deep, which is to be conveyed to the Homeowner's Association ("HOA") for the development and protected by a Category One Conservation Easement. The distance between the lodge structure and the closest residential unit would be approximately 110 feet. To the west, the duplex units would be separated from the Vedanta Center parking lot by the shared access road and a 30-foot landscaped area, in addition to the backyards of the units themselves. To the north, they would abut a dry stormwater management pond

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<sup>1</sup> Testimony from a representative of the Vedanta Center indicated that these units would be under the Vedanta Center's ownership, and that the Center hopes to sell the units with covenants restricting their occupancy to members of the Vedanta Center community. A question was raised as to the legality of such covenants, which might be considered discriminatory under federal, state and/or county law. The District Council is not making a judgment on the legality or appropriateness of any such covenants by acting on this rezoning request.

and a forested area. To the south, the buffering shown on the Development Plan is somewhat different for the two rows of units. The western row of units, closer to the Vedanta Center, is separated from Bel Pre Road by the access road that would serve the duplex units, plus a landscaped strip about 40 feet wide. The eastern row of units, closer to the Wheaton Moose Lodge property, is separated from Bel Pre Road by an existing forested area about 65 feet deep.

As noted above in connection with the duplex units, the proposed Development Plan provides for sidewalks and pathways that would connect the residential areas of the development with each other, the Vedanta Center, a partial trail along the stream valley buffer, the on-site recreation areas and the abutting streets. The Development Plan shows one point of access on Bel Pre Road, for the Vedanta Center and the 12 duplex units. The residential areas along Homecrest Road and in the northeast corner of the site would be accessed via two points of entry on Homecrest Road, connecting to Roads A, B and C.

With regard to phasing, the Development Plan specifies that all development steps may occur in any order or simultaneously, provided that "construction of the 6 MPDU townhouses will commence no later than commencement of the 18th market rate unit." Ex. 60(a).

Pursuant to Code § 59-D-1.11, development under the PD Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD Zone. This development plan must contain several elements, including a land use plan showing site access, proposed buildings and structures, a preliminary classification of dwelling units by type and number of bedrooms, parking areas, land to be dedicated to public use, and land intended for common or quasi-public use but not intended to be in public ownership. Code §59-D-1.3. The Development Plan is binding on the Applicant except where particular elements are identified as illustrative or conceptual. The Development Plan is subject to site plan review by the Planning Board, and changes in details may be made at that time. The principal specifications on the Development Plan – those that the District Council considers in evaluating compatibility and compliance with the



zone, for example – may not be changed without further application to the Council to amend the Development Plan.

The principal component of the Development Plan in this case is a document entitled Development Plan, Exhibit 112(a). Exhibit 112(a), satisfies the requirements of Code § 59-D-1.3 by showing access points, approximate locations of existing and proposed buildings and structures, preliminary classification of dwellings by number of bedrooms, parking areas, intended right-of-way dedications for the three internal roads and Homecrest Road, and areas intended for common use but not public ownership (recreation areas and stream valley). The Development Plan specifies that lot sizes, shapes and building locations will be approximately as shown, with exact sizes, shapes and locations to be determined during Preliminary Plan and Site Plan proceedings. The intent of this language is to allow for minor shifts in lot lines and building locations while ensuring that if this project goes forward, the general locations shown for detached, duplex and townhouse units will not change in the Applicant's Preliminary Plan and Site Plan submissions. The Development Plan has one minor error that will have to be corrected on the Development Plan submitted for certification: it identifies Lot 3 under its prior, rather than current, ownership.

The Development Plan specifies (in language that is not described as illustrative, and therefore is binding) how the project would satisfy the development standards for the zone. This includes a maximum height for residential buildings of 40 feet, and a maximum height for the new worship center of 24 feet, plus 20 feet more for cupolas and domes. These provisions also specify a maximum of 39 dwelling units and memorialize a commitment to preserve at least 45 percent of the gross land area as green area, which is considerably higher than the 30 percent required in the PD Zone. Parking is planned to exceed the Zoning Ordinance requirement, with (preliminarily) four spaces per unit for detached homes (two garage, two driveway), two spaces for townhouses and duplex units (one garage, one driveway), and 85 spaces for the Vedanta Center.

The Development Plan also contains additional, textual binding elements that memorialize a variety of commitments the Applicant has made to the Planning Board and the community, as summarized below:

- Maximum of 39 units, including existing house on Vedanta Center property.
- Access from a single point on Bel Pre Road and two points on Homecrest Road.
- Worship center addition not to exceed 6,500 square feet gross floor area.
- HOA to maintain landscaping and fencing shown on Development Plan along Homecrest Road in first 20 feet east of right-of-way along Lots 7-13, and first ten feet east of right-of-way along reforestation area, Parcel I. HOA or Vedanta Center to maintain landscaping along Bel Pre Road in first 20 feet north of right-of-way.
- All access points to be maintained free and clear of any sight distance obstructions on subject property.
- Maximum of seven dwelling units along Homecrest Road.
- To help ensure compatibility, rear of homes along Homecrest Road to be designed and finished with additional architectural features typically found on building fronts, including double hung windows with circle tops, and additional moldings around windows and doors.
- Minimum of six dwelling units fronting on Road C.
- No detached sheds or outbuildings permitted in rear yards along Homecrest Road or rear yards of Lots 15-20.
- Landscaping along Homecrest Road to include larger caliper hardwood and evergreen trees, emphasize native species and avoid plants on Maryland State Invasive Species List.
- To meet community identification recommendation of Aspen Hill Master Plan, development will include "Layhill" in its name.



- Land dedication and construction of Homecrest Road and Road C to be in compliance with recommendations of Aspen Hill Master Plan.
- Applicant to place Category I Conservation Easement on minimum 4.73 acres of reforestation and forest retention shown on Preliminary Forest Conservation Plan dated July 13, 2006.

The District Council finds that the Development Plan submitted with this application satisfies all the requirements for a development plan under Code §59-D-1.61(a)-(e). Each of the required findings is addressed below.

**§59-D-1.61(a): master plan consistency.** In the present case, both the Planning Board and Technical Staff found that the proposed development conforms to the recommendations of the *1994 Approved and Adopted Aspen Hill Master Plan* (the "Master Plan"). The Hearing Examiner agrees.

The Development Plan is in compliance with the Master Plan's broad goals related to housing, the environment, and community identity and design. The three unit types proposed offer a choice of housing types for people of varying incomes and lifestyles. The most significant natural resources on the site would be fully preserved within the stream valley. The Master Plan's goal with regard to community identity and design is to "[p]rovide for attractive land uses that encourage opportunity for social interaction and promote community identity." Master Plan at 22. The Development Plan would serve this goal by creating a well-planned community, with uniform landscaping and fencing along Homecrest Road, an architecturally interesting worship building serving as a "visual accent", and a network of sidewalks and paths connecting the various residential areas with each other, the worship center, the recreation area, the partial stream valley trail and neighboring sidewalks.

The site layout might better meet the Master Plan's goal of increasing community interaction and reducing the social and physical isolation of portions of the community if the MPDUs were distributed in more than one location on the site, rather than located together at one end of the main internal road. However, the Applicant does not consider this approach feasible for such a small

development. Moreover, the residents of the MPDUs would have neighbors in detached homes on three sides, and there is every reason to expect they would be fully integrated into the life of this small community. The District Council finds that the Development Plan substantially complies with the Master Plan's community identity goals.

The Development Plan also complies with the specific recommendations made for the Western Bel Pre Road Area: PD-2 zoning for consolidations of ten acres or more; protection of Bel Pre Creek and the stream buffer areas; and consolidated, on-site storm water management.

A central element of the Master Plan's vision for the development of the subject property and nearby parcels was a road along the northern property line of the site, with access from Homecrest Road. This road is recommended as part of a network of internal roadways to reduce the need for curb cuts on Bel Pre Road, reduce the environmental impacts of development on Bel Pre Creek, and provide a way for new development to enter busy Bel Pre Road at a signalized intersection. The Master Plan further suggested that if the proximity of this road to the existing entrance for the Aspen Hill Club is deemed to be unsafe, access to the two properties should be combined on the new road. The Applicant proposes to construct Road C in the location indicated in the Master Plan, but the right-of-way shown on the Development Plan is slightly smaller than recommended in the Master Plan.<sup>2</sup> The Hearing Examiner, Planning Board and Technical Staff found, nonetheless, that the proposed Development Plan substantially complies with the Master Plan. Moreover, the unrefuted testimony of the Applicant's traffic planner is that the right-of-way widths proposed on the Development Plan would be adequate to handle the expected traffic. The District Council finds that the departure from the Master Plan's specific right-of-way recommendations is not sufficient to derail this application's substantial compliance with the Master Plan.

The Master Plan also recommends the creation of a "green corridor" along Bel Pre Road. The Applicant contends that it would satisfy this recommendation by planting trees along its Bel Pre

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<sup>2</sup> The Master Plan recommended a primary residential road (70 foot right-of-way) from Homecrest Road to a point where access might have to be provided for the Aspen Hill Club, and a secondary road (60-foot right-of-way) thereafter. The Development Plan provides for 60 feet of right-of-way from Homecrest Road to the possible Aspen Hill Club access point, and 50 feet thereafter.



Road frontage, even though they would not separate the sidewalk from the road. The District Council considers the Applicant's partial compliance with the green corridor recommendation sufficient to support a finding of substantial compliance with the Master Plan, at least for purposes of zoning stage review. However, the District Council would consider it preferable, from the standpoint of both safety and aesthetics, for the Applicant to satisfy the desire expressed by several community members for street trees separating the sidewalk from the road. The District Council would also find such an approach to be more consistent with the Master Plan.

Based on the preponderance of the evidence, the District Council finds that the proposed development would be in substantial compliance with the use, density and other recommendations of the Master Plan. The evidence also supports the conclusion that the Development Plan does not conflict with any other county plans or policies, or the capital improvement program. It would further county housing policy by creating diverse housing options, including affordable housing. The evidence demonstrates that the proposed development would satisfy the requirements of Local Area Transportation Review, would have minimal impact on public school capacity and, as a consequence, would not be inconsistent with the county Growth Policy.

**§59-D-1.61(b): purposes of the zone; maximum safety, convenience and amenity of residents; and compatibility with adjacent development.**

**1. The Purpose Clause**

The purpose clause for the PD Zone contains a number of goals and objectives, all of which are satisfied by the instant application. The District Council's findings as to each paragraph of the purpose clause are set forth below.

First paragraph: Master Plan implementation. As discussed under (a) above, the proposed development would substantially comply with the recommendations and objectives of the Master Plan. It would also integrate mutually compatible uses and provide more efficient circulation, access and stormwater management than could be achieved under the current conventional zoning, as well as better environmental protection and amenities.

Second paragraph: social and community interaction, distinctive visual character, balanced mixture of uses. The proposed development would achieve these objectives in several ways. The development would have a distinctive visual character because a worship center would occupy a prominent central location, because much of the site would consist of open stream valley buffer, and because of the unusual architecture proposed for the new Vedanta Center building. A network of pedestrian sidewalks and trails would facilitate social and community interaction by connecting the residential areas with each other, the Vedanta Center, the recreation areas at the west end of the site, a path along part of the stream buffer, and adjoining public sidewalks. The subject site is in relatively close proximity to shopping, parks and public transportation, and testimony indicated that there is a substantial amount of pedestrian activity, despite marginally adequate sidewalks, providing opportunities for interaction between residents of the proposed development and the surrounding community. In addition, the expansion of the Vedanta Center would enhance opportunities for fellowship and community among its members and visitors, who would be part of the larger community as well.

Most of the homes would face other homes, further encouraging social interaction and a sense of community within the development. One possible flaw in the plan is that the decision to face all of the homes inward, with their rear facades toward the roadways, tends to cut off opportunities for interaction between residents of the proposed community and those in the surrounding area. It might have been preferable, from a public interest standpoint, to strike the balance in favor of integration with the larger community, given that the three homes on the west side of Homecrest Road have few neighbors. The record suggests that this decision was made at the urging of Technical Staff, who apparently felt that an internal sense of community was more important. However, this issue is not enough, in the District Council's view, to undercut the conclusion that overall, the proposed development would satisfy this element of the purpose clause.

The proposed development does not include commercial uses due to its size, but it does include a mix of residential use types, recreational opportunities and a religious use. Technical Staff



indicates that commercial uses would not be appropriate for a development of this size, and the District Council agrees. Based on the preponderance of the evidence, the District Council concludes that the development depicted on the proposed Development Plan would satisfy this element of the purpose clause.

Third paragraph: broad range of housing types. The proposed development would provide a broad range of housing types, including two-to-three bedroom MPDUs, three-bedroom duplex units and four-bedroom single-family detached homes. These options would attract residents with varying lifestyles and income levels. The development would broaden the mix of housing types in the surrounding area, in which residential uses other than single family detached homes currently dominate.

Fourth and fifth paragraphs: trees, grading and open space. The proposed development would preserve four acres of existing forest, mostly in the stream valley, and would create a reforestation area measuring 0.63 acres. The layout of the Development Plan would minimize grading by preserving the stream valley buffer and existing Vedanta Center buildings, and through efficient layouts making use of the existing topography. Contrary to statements made by some community members, there is no evidence of record to suggest that the Applicant intends to clear and re-grade the entire site. On the contrary, significant forested areas are to be preserved, particularly in the stream valley.

Both residents of the proposed development and visitors to the Vedanta Center would be able to enjoy the visual beauty of the stream valley from the trail, the sidewalks and the recreation areas at the west end of the site. The stream valley would provide a lovely vista for the six homes proposed at the northeast end of the site. The stream valley, which is the main open space area, would not be readily accessible to the general public because it is set back from the roads. Area residents might be able to enjoy the trail along the stream buffer by parking in the Vedanta Center parking lot, which by all accounts is empty much of the time, or on Road B. In addition, the preserved stream

valley on the subject property would continue to form part of and support the health of the larger stream valley that runs through the area, which serves as a valuable amenity for all area residents.

Additional open space is shown in the reforestation area proposed along Homecrest Road. This area would be a visual amenity for area residents and visitors, particularly as it matures. The District Council agrees with Technical Staff that the PD Zone's open space requirement is geared more towards large projects, and that for a development of this size, the open space and access shown is adequate.

Sixth paragraph: pedestrian networks. Pedestrian activity would be encouraged by a network of pedestrian sidewalks and trails linking the residential areas with one another, the worship center, the recreation areas on Road B, the partial stream valley trail and the nearby public sidewalks. The subject site is located within one block of bus stops on both Bel Pre and Homecrest Roads. The availability of pedestrian sidewalks and paths separate from roads, and the proximity to public transportation, would both reduce reliance on the automobile.

Seventh paragraph: scale. The PD Zone encourages, but does not require, development on a large scale. The proposed Development Plan would consolidate three parcels for a total of 16 acres of land. While not large in an absolute sense, the proposed development would aggregate enough parcels to satisfy the Master Plan's specific size recommendation for PD-2 zoning, with enough to space to permit three different unit types and the efficiency of joint storm water management and road connections.

Eighth paragraph, first part: maximum safety, convenience and amenity. The evidence demonstrates that the proposed development would provide safe and convenient roadways, sidewalks and pathways, provided that the necessary steps are taken to assure adequate sight distances for the Bel Pre Road entrance and the access to Road C. On Bel Pre Road, adequate sight distance likely would require cutting back vegetation and moving a utility pole by a few feet. At the access point to Road C, ensuring a safe condition might require providing access to the Aspen Hill Club from Road C.



The sidewalk along Bel Pre Road would undoubtedly be safer and more attractive with a landscaped strip separating it from the roadway. However, in light of other features of the plan, the District Council does not consider this step essential to satisfying the purpose clause.

Residents of the homes on the west side of the site would have access to Bel Pre Road at a signalized intersection. Residents of the duplex units and visitors to the Vedanta Center would not have that advantage, but their shared access point would improve safety on Bel Pre Road by reducing the number of curb cuts along this stretch of land from two to one. The proposed pathways, partial stream valley trail and recreation areas represent amenities that would be available to residents of the development and to any residents of the larger community who care to enter the development to view the stream valley. The reforestation area on Homecrest Road would be an additional visual amenity for area residents and visitors.

Eighth paragraph, second part: compatibility. The District Council finds that the proposed development would be compatible with existing uses in the surrounding area. The proposed uses -- residential and worship center -- are clearly compatible with the surrounding area, which is used primarily for residential purposes. For the reasons discussed below, the District Council finds the Development Plan to be compatible with the surrounding area, as well.

The duplex units would be adequately buffered from the Moose Lodge building by 77 feet of forested land, which would provide substantial visual and noise screening. Across Bel Pre Road, the duplex units would confront townhouses that are built at a density of five dwelling units per acre, significantly higher than the 2.4 d.u./acre proposed for the subject site overall. The townhouses and single-family detached home with frontage on Bel Pre Road, in the southwest corner of the site, would confront townhouses built at five d.u./acre, and three-story multi-family units with a density of approximately 22 d.u./acre. Moreover, the dwellings across Bel Pre Road are set back a significant distance from the street, so the impact of the new development likely would not be substantial. The homes in the northeast corner of the site would abut the wooded portion of the Moose Lodge property

to the east. To the north, they would confront the Aspen Hill Club, which has a substantial level of on-site activity and, in all likelihood, would not be affected by these homes.

The homes proposed along Homecrest Road are the most visible, with their long street frontage. They play a key role in the visual impact of the proposed development on the intersection and on Homecrest Road. The Development Plan proposes a total of seven detached homes along Homecrest Road, arranged on either side of a 0.63-acre reforestation area. They have setbacks from the face of curb varying from 56 feet to 80 feet, and the distance between them varies from 12 feet to 43 feet. These seven homes would be across the street from the Aspenwood Senior Living Community and three single-family detached homes, all of which have substantial front building setbacks. The three single-family homes would be directly across from the reforestation area and the four homes flanking it. The reforestation would be visually prominent because it would occupy roughly the same amount of street frontage as the four houses surrounding it.

The seven dwellings along Homecrest Road would be broken up by Road A and the reforestation area, allowing enough room for each house to have a substantial amount of open space on at least one side. For three houses that space is occupied by a side yard and a road, and for the other four it is green space. In addition, these seven homes would have varying setbacks, rather than presenting a straight, unbroken line of houses. The visual impact of the houses along Homecrest Road would be softened by 20 feet of landscaping, in addition to a sidewalk and street trees. The Applicant has committed to including larger caliper hardwood and evergreen trees in this landscaping, to ensure an immediate visual impact. The Applicant has also committed to design and finish the rears of homes facing Homecrest Road with architectural features normally found on building fronts, such as double-hung windows with circle tops, and additional moldings around doors and windows.

The record suggests that the homes the Applicant proposes would be taller and of a different architectural style than the three homes across the street. However, compatible need not mean "the same." With implementation of the present Development Plan, the three homes across the street would face four homes and a substantial reforestation area, all bordered by a 20-foot landscaped



buffer, a sidewalk and a row of street trees. A view of trees and houses would be a change from the current open vista of green fields, but with the environmental constraints on this site, it is difficult to imagine how it could be developed at the density called for in the Master Plan – two dwelling units per acre – without materially changing that vista. As the Master Plan makes clear, the purpose of recommending PD zoning for the subject property was to provide an incentive for consolidation of lots to attain the benefits that the development proposed here would provide, including efficient road access with fewer curb cuts, joint storm water management and more effective environmental protection.

A compatibility determination also must take into account the entire surrounding area, not just the three single-family homes across from the subject site. The evidence suggests that this neighborhood has more than its share of special exceptions. Nonetheless, it would be inappropriate, in the context of a rezoning case, to ignore the existence of those special exceptions. The surrounding area in this case is not predominantly a neighborhood of single-family, detached homes. It has a mix of single-family, multi-family and institutional residential uses, plus the Aspen Hill Club. The buildings in the surrounding area, and even in the immediate vicinity of the subject site, vary from one story to five stories, and several of them have very large parking lots that create a decidedly non-rural impression. In this context, the 40-foot homes proposed by the Applicant would blend well with their surroundings.

The District Council sees no justification to impose on this Development Plan, as requested by the Aspen Hill Club, a requirement for the type of berms and landscape buffering that were required for the Aspen Hill Club and other special exceptions in the surrounding area. Special exceptions are typically required to install buffers where they abut single-family residential property, to protect residential uses from the adverse effects of non-residential special exceptions. The level of activity, noise and traffic impacts of non-residential uses are different, and typically more intense, than those of single-family residential uses. Accordingly, the extensive berms, setbacks and screening surrounding several of the nearby special exceptions are appropriate for those uses, but are not necessary for a residential community.

For all of the reasons stated above, the District Council concludes that the proposed rezoning and development would be compatible with existing land uses in the surrounding area.

Ninth paragraph: three findings. The purpose clause states that the PD Zone "is in the nature of a special exception," and shall be approved or disapproved based on three findings:

- (1) the application is or is not proper for the comprehensive and systematic development of the county;
- (2) the application is or is not capable of accomplishing the purposes of this zone; and
- (3) the application is or is not in substantial compliance with the duly approved and adopted general plan and master plans.

Based on the preponderance of the evidence and for the reasons stated above, the District Council concludes that present application is proper for the comprehensive and systematic development of the County; is capable of accomplishing all of the purposes of the zone; and is in substantial compliance with the Master Plan.

## **2. Standards and Regulations of the Zone**

The standards and regulations of the PD-2 Zone are summarized below, together with the grounds for the District Council's conclusion that the proposed development would satisfy these requirements.

Section 59-C-7.121, Master Plan Density. Pursuant to Code §59-C-7.121, "no land can be classified in the planned development zone unless such land is within an area for which there is an existing, duly adopted master plan which shows such land for a density of 2 dwelling units per acre or higher." The subject property is recommended in the Master Plan for PD-2 zoning, provided there is a consolidation of at least ten acres of land. The subject property represents an assemblage of approximately 16 acres, so this requirement is satisfied.



Section 59-C-7.122, Minimum Area. Code §59-C-7.122 specifies several criteria, any one of which may be satisfied to qualify land for reclassification to the PD Zone. The subject application satisfies the last of these criteria, which states the following:

That the Property is recommended for the PD zone in an approved and adopted master or sector plan and so uniquely situated that assembly of a minimum gross area to accommodate at least 50 dwelling units is unlikely or undesirable and the development of less than 50 dwelling units is in the public interest.

The subject property is recommended for the PD Zone in the Master Plan. It is not large enough, at 16 acres with a density of two units per acre, to accommodate 50 dwelling units. Applicant J. Kirby Development represented that its efforts to negotiate with the adjacent Wheaton Moose Lodge for additional land at the rear of the Moose Lodge parcel were unfruitful. A representative of the Moose Lodge confirmed this, stating that the Lodge rejected a request for negotiations. The adjacent property to the north is fully developed and used by the Aspen Hill Club, and the other two boundaries of the property abut roadways. The evidence indicates that development of the subject property with less than 50 units would be in the public interest, as it would allow implementation of the Master Plan's goals for this property. Accordingly, the District Council finds that this requirement is satisfied.

Section 59-C-7.131, Residential Uses. Pursuant to Code §59-C-7.131, all types of residential uses are permitted, but parameters are established for the unit mix. A PD-2 development with less than 50 units must have at least 35 percent single-family detached units and at least 35 percent townhouse or single-family attached units. The proposed Development Plan provides for 54 percent single-family detached units and 46 percent single-family attached or townhouse units, satisfying this requirement.

Section 59-C-7.132, Commercial Uses. Commercial uses are permitted but not required under the PD Zone. Parameters established for commercial uses are not applicable to the subject application, which proposes no commercial uses.

Section 59-C-7.133, Other Uses. Noncommercial community recreational facilities for the use of residents, such as the recreation area on Road B and the trail along part of the stream valley, are permitted in the PD Zone. The PD Zone also permits any nonresidential, noncommercial

use at the discretion of the District Council, on a finding that such use is compatible with the planned development and satisfies the requirements of Section 59-C-7.15. The Vedanta Center may be considered a nonresidential, noncommercial use, and the District Council considers it compatible with the proposed development. It would provide a visual amenity, possibly a worship center for some residents, and a quiet neighbor. As discussed below, the specific requirements of Section 59-C-7.15 also would be satisfied.

Section 59-C-7.14, Density of Residential Development. The Zoning Ordinance provides the following direction for the District Council in considering a request for the PD Zone (§ 59-C-7.14(b)):

The District Council must determine whether the density category applied for is appropriate, taking into consideration and being guided by the general plan, the area master or sector plan, the capital improvements program, the purposes of the planned development zone, the requirement to provide [MPDUs], and such other information as may be relevant.

The density category applied for, PD-2, is the lowest density available in the PD Zones, and is recommended in the Master Plan. All of the evidence indicates that this density category is appropriate for the site.

Section 59-C-7.15, Compatibility. This section requires that a proposed development be compatible internally and with adjacent uses. It also establishes minimum parameters for setbacks and building height that are designed to promote compatibility. As discussed above, the District Council finds that the proposed development would be compatible with existing development in the surrounding area. The application also satisfies the specific setback and building height provisions, as detailed below.

Section 59-C-7.15 of the Zoning Ordinance states that where land classified under the PD Zone adjoins land for which the area master plan recommends a one-family detached zone, no building other than a one-family detached residence may be constructed within 100 feet of such adjoining land, and no building may be constructed at a height greater than its distance from such adjoining land. The Development Plan specifies a maximum height of 40 feet for all residential units, and notes that all units are located at least 60 feet from the only adjacent land that is recommended in



the Master Plan for single-family detached zoning, which is the Aspen Hill Club property to the north. Moreover, it is evident on the Development Plan that all units shown within 100 feet of the northern property line are single-family detached homes. The new Vedanta Center building would be over 400 feet from the northern property line. Adjacent property to the east is recommended in the Master Plan for PD-2 zoning, and to the south and west are roadways, so these limitations do not apply.

Section 59-C-7.16, Green Area. The PD-2 Zone requires a minimum of 30 percent green area. The Development Plan depicts green space of 7.3 acres, or approximately 46 percent of the site, and specifies that a minimum of 45 percent green area will be provided.

Section 59-C-7.17, Dedication of Land for Public Use. This section requires that land necessary for public streets, parks, schools and other public uses must be dedicated to public use, with such dedications shown on all required development plans and site plans. The Development Plan shows the small dedication required for the right-of-way of Homecrest Road (described by Technical Staff as about six feet deep), as well as the 50- and 60-foot dedications necessary for Road C, a 27-foot dedication for Road B, and a 26-foot dedication for Road A. No other dedications are anticipated.

Section 59-C-7.18, Parking Facilities. Off-street parking must be provided in accordance with the requirements of Article 59-E of the Zoning Ordinance. As shown on the Development Plan, the proposed project would provide more than the required number of spaces for the single-family detached units, the number of spaces required for the other residential uses, and more than the number of spaces required for the Vedanta Center.

The final two elements of finding (b), the maximum safety, convenience and amenity of the residents, and compatibility, have already been addressed.

**§59-D-1.61(c): safe, adequate and efficient internal vehicular and pedestrian circulation systems.** The evidence supports a finding that the proposed internal vehicular and pedestrian circulation systems and points of external access would be safe, adequate, and efficient. The internal circulation system would not provide vehicular connectivity, to avoid creating a cut-through route for motorists trying to circumvent the traffic light. It would, however, provide pedestrian

connections among the residential areas, the worship center, the recreation areas, the partial stream valley trail and nearby sidewalks, all separate from roadways. The District Council concludes, based on the preponderance of the evidence, that the proposed points of external access can be constructed in the locations shown in a manner that would be safe, adequate and efficient.

**§59-D-1.61(d): preservation of natural features.** The proposed development would tend to prevent erosion of the soil and preserve natural vegetation and other natural features of the site by preserving the stream valley buffer and additional small, forested areas. Efficient layouts making use of the existing topography, together with preservation of the stream valley, would minimize grading. The evidence establishes that forest conservation requirements under Chapter 22A would be satisfied. The current concept storm water management plan had not yet received approval from the Department of Permitting Services when the record was closed. However, the evidence indicates that the current plan contains only minor differences from an earlier plan that was approved by the Department of Permitting Services, and that no waivers are likely to be needed.

**§59-D-1.61(e): common area maintenance.** The Applicant has provided draft documents that adequately provide for perpetual maintenance of common and quasi-public areas by a homeowners' association.

In addition to the five development plan findings, the District Council also must consider the relationship of the present application to the public interest. When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities or the environment. For the reasons discussed under finding (a) above, the District Council concludes that the subject application substantially complies with the Master Plan.

The evidence of record indicates that the proposed development would have no adverse effects on traffic conditions, schools or public utilities, and would comply with forest conservation and stormwater management regulations.



Accordingly, having carefully weighed the totality of the evidence, the District Council concludes that approval of the requested zoning reclassification would be in the public interest.

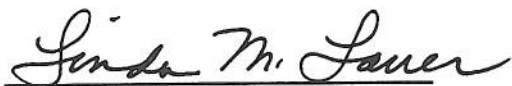
For these reasons and because to approve the instant zoning application will aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be approved in the manner set forth below.

#### **ACTION**

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

Zoning Application No. G-836, requesting reclassification from the RE-2 Zone to the PD-2 Zone of 16 acres of land located at 2929, 3001 and 3031 Bel Pre Road in Silver Spring, Maryland in the 13<sup>th</sup> Election District, is hereby approved in the amount requested subject to the specifications and requirements of the final Development Plan approved by the District Council, Exhibit 112(a); provided that, within 10 days of receipt of the District Council's approval resolution, the Applicant must submit to the Hearing Examiner for certification a reproducible original and three copies of the approved Development Plan, with the owner of Lot 3 correctly identified, in accordance with §59-D-1.64.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council